

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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AURELIO FLORES MORENO and LUCINO
MORALES VICTORIA *individually and on behalf*
of others similarly situated,

Case No. 17-CV-09439-LTS-KNF

Plaintiffs,

-against-

153 J AND J FOOD MARKET CORP. (d/b/a JJ
FOOD MARKET), and JULIAN RAMOS,

Defendants.

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**DEFENDANTS' MEMORANDUM OF LAW IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

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PRELIMINARY STATEMENT

Defendant, Julian Ramos, does not contest the nature of this action, nor the procedural history as set forth in Plaintiffs' Memorandum of Law in Support of their Motion for Summary Judgment.

Defendant does not contest a number of plaintiffs' "facts" alleged in support of their Motion for Summary Judgment.

Defendant, Julian Ramos' deposition testimony produced, in part, by plaintiffs in support of their Motion, Mr. Ramos' Declaration, the corroborating Declaration submitted by David Garcia, and the documentary exhibits submitted by Mr. Ramos, raise questions of fact regarding Mr. Ramos' relationship to JJ Food Market Corp. and then 153 J and J Food Market Corp.

Mr. Ramos' Declaration alleges the following facts which raises questions of fact:

- ¶2 At all times referred to by the plaintiffs, Maida Luna owned JJ Food Market Corp.
- ¶3 Maida Luna had final say on hiring and firing workers and determining their compensation and method of payment.
- ¶5 During the period, plaintiffs allege they worked at the store, Julian Ramos did not pay them or even work the same shift the plaintiffs work.
- ¶9-13 Maida Luna authorized payments to both plaintiffs and she also assigned their work shifts.
- ¶14 Defendant, Julian Ramos and David Garcia were prohibited by Maida Luna from in or about June 2016 – October 2016 from working in the store.
- ¶15 153 J and J Food Market Corp. was incorporated on October 21, 2016, after Maida Luna gave up JJ Food Market Corporation pursuant to the divorce

agreement between Julian Ramos and Maida Luna. Julian Ramos' sister, Maria Ramos, was the sole shareholder of 153 J and J Food Market Corp.

Defendant, Julian Ramos' Declaration is corroborated by the Declaration of David Garcia, who also worked at the store during the time period when the plaintiffs worked there.

Mr. Garcia states in his Declaration as follows:

¶2 He was paid on a weekly basis by Maida Luna who determined what she would pay him and how he was to be paid.

¶3 Julian Ramos worked until 2:00 pm each day and he did not overlap with the plaintiff's work hours.

¶4 From June 2016 to October 2016, he and Julian Ramos were prohibited by Maida Luna from working at the store.

The foregoing demonstrates there is a clear question of fact whether defendant, Julian Ramos, was the employer of the plaintiffs as alleged by the plaintiffs.

ARGUMENT

Summary Judgment is appropriate where there is no genuine issue of material fact which would affect the outcome of the lawsuit under the applicable law. Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986).

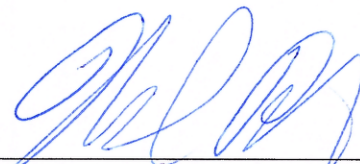
A dispute is genuine if after consideration of the entire record, a jury could find in favor of the non-moving party. Ricci v. Destafano, 557 U.S. 557 (2009), Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 575 (1988).

In this matter, the plaintiffs have failed to prove that defendant, Julian Ramos, was an owner of JJ Market Food Corporation, the corporation which held the lease on the store during the period the plaintiffs worked in the store.

Plaintiffs further fail to prove that Julian Ramos has any personal liability with respect to plaintiffs' claims for damages or the Default Judgment they obtained against JJ Food Market Corporation.

Based upon the foregoing, defendants respectfully request that the Court deny plaintiffs' Motion for Summary Judgment.

Dated: New York, New York
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